Zurich Takaful Malaysia Bhd v Yathavan a/l Doraisamy & Anor

HIGH COURT (IPOH) — SUIT NO AA-22NCVC-25–04 OF 2020
MOSES SUSAYAN JC
29 NOVEMBER 2024

Civil Procedure — Pleadings — Amendment — Application to re-amend amended statement of claim — Application to reopen plaintiff's case — Whether application to re-amend amended statement of claim would assist court and serve interest of justice — Whether application to re-amend amended statement of claim was tactical manoeuvre designed to delay trial — Whether application to re-amend amended statement of claim ought to be allowed — Whether failure to reopen plaintiff's case amounted to miscarriage of justice — Rules of Court 2012 O 20 r 5 & O 92 r 4

In the main action, the takaful operator ('the plaintiff') who had issued a takaful policy to the deceased had sought for a declaration to repudiate the policy and for the policy to deemed null and void due to alleged fraudulent misrepresentation by the first defendant ('D1') as the nominee of the policy. After the trial had progressed into the defendant's case, with the plaintiff having already closed its case, the plaintiff filed encl 121 under O 20 r 5 and O 92 r 4 of the Rules of Court 2012, seeking leave to amend its amended statement of claim and simultaneously filed an application in encl 124 to reopen the plaintiff's case. The plaintiff applied to re-amend the amended statement of claim due to new evidence arising from witnesses' evidence during trial statements and the discovery of contradictory information. The plaintiff contended that the testimony of D1 and Madam Bavanni introduced significant contradictions and raised questions about the veracity of their statements. On one hand, the claim that Madam Bavanni was D1's wife conflicted with her being the nominee for the deceased under another insurance policy ('the AIA policy'), where her stated relationship to the deceased was listed as 'spouse'. On the other hand, D1's assertion that the deceased was his cousin was directly contradicted by his designation as the deceased's 'son' in the AIA policy. These inconsistencies highlighted potential misrepresentations aimed at manipulating the outcomes of claims under various insurance policies. D1 on the other hand argued that the application for re-amendment and reopening the plaintiff's case was a technical manoeuvre intended to derail the trial.

Held, allowing encls 121 and 124 with costs of RM2,500 for each application in favour of D1 to be paid by the plaintiff:

(1) It was well established that leave to amend may be granted at any stage of the proceedings, even if it introduced a new cause of action, provided it did not result in injustice or prejudice to the other party that could not be compensated with costs. The power to allow amendments rested with the court's discretion, which ought to be exercised judiciously and in accordance with settled legal principles, taking into account the unique circumstances of each case (see para 9).

(2) The plaintiff's intended re-amendment highlighted D1's alleged attempt to submit a false insurance claim with another insurance company. At this stage, the court could not conclude whether D1 and Madam Bavanni provided truthful testimony, but the court found that allowing the proposed evidence would serve the interests of justice. It would also aid the court in determining the credibility of the witnesses. The documents identified as exh HSY2 and exh HSY3 in encl 121, if properly tendered through witnesses and subjected to examination and cross-examination, would significantly aid the court in deciding the matter. Knowing that these documents could assist in achieving a fair outcome in the present case, the court found no reason to deny the plaintiff's re-amendment application (see paras 11–12).

(3) In the circumstances, the court rejected D1's argument that the application for re-amendment and reopening the plaintiff's case was a tactical manoeuvre intended to derail the trial. On the contrary, allowing the amendment and reopening the plaintiff's case to introduce these documents ensured a comprehensive examination of all evidence for the effective disposal of the case before the court. While the absence of these exhibits might be advantageous to the defendants, nevertheless, making them available and properly tendering them as evidence in the court could not be considered prejudicial in a manner warranting their exclusion. Denying the application would, therefore, amount to suppressing material evidence, which was contrary to the principles of justice. Although the court recognised some delay in making the application, such delay could be adequately compensated with costs. On the whole, the court was convinced that the application for re-amendment was made in good faith, and any prejudice to the defendants could be adequately compensated (see paras 13–14).

(4) Having carefully considered the plaintiff's application for re-amendment and allowing the same, the court in the interest of a fair trial found merit in the plaintiff's application to reopen their case. Central to such application was the relevance of the AIA policy and related documents which directly contradicted the testimonies of D1 and Madam Bavanni. Furthermore, the plaintiff's contention that the AIA policy agent, Mr Vincent Heng @ Heng Meng Sheng, may provide crucial testimony that required the need to reopen the case. The court also acknowledged

A the plaintiff's assertion that failing to reopen the case would result in a miscarriage of justice. Having allowed the re-amendment to the statement of claim, which was primarily to introduce new evidence, it would leave those evidence unexamined, without reopening the plaintiff's case. Insurance contracts were based on the principle of utmost
B good faith (*uberrimae fidei*), and the need to scrutinise all relevant evidence was paramount to ensure fairness (see paras 17–18).

[Bahasa Malaysia summary

C Dalam tindakan utama, pengendali takaful ('plaintif') yang telah mengeluarkan polisi takaful kepada si mati telah memohon pengisytiharan untuk membatalkan polisi tersebut dan polisi tersebut disifatkan terbatal dan tidak sah disebabkan salah nyata palsu yang didakwa dilakukan oleh defendan pertama ('D1') sebagai penama polisi tersebut. Selepas plaintif menutup
D kesnya dan perbicaraan diteruskan dengan kes defendan, plaintif memfailkan lampiran 121 di bawah A 20 k 5 dan A 92 k 4 Kaedah-Kaedah Mahkamah 2012, bagi memohon kebenaran untuk meminda pernyataan tuntutannya yang dipinda dan pada masa yang sama memfailkan permohonan dalam lampiran 124 untuk membuka semula kes tersebut. Plaintif memohon untuk
E meminda semula pernyataan tuntutan terpindanya kerana terdapat keterangan baharu yang timbul daripada keterangan saksi-saksi semasa perbicaraan dan penemuan maklumat yang bercanggah. Plaintif berhujah bahawa keterangan D1 dan Puan Bavanni menunjukkan percanggahan yang ketara dan menimbulkan persoalan tentang kebenaran kenyataan mereka. Di satu pihak,
F dakwaan bahawa Puan Bavanni adalah isteri D1 bercanggah dengan fakta bahawa dia merupakan penama untuk si mati di bawah polisi insurans yang lain ('Polisi AIA'), di mana hubungannya dengan si mati disenaraikan sebagai 'isteri'. Sebaliknya, penegasan D1 bahawa si mati adalah sepupunya secara langsung bercanggah dengan pelantikannya sebagai 'anak' si mati dalam Polisi
G AIA tersebut. Ketidakkonsistenan ini menyerlahkan kemungkinan salah nyata yang bertujuan untuk memanipulasi hasil tuntutan di bawah pelbagai polisi insurans. D1 sebaliknya berhujah bahawa permohonan untuk pindaan semula dan pembukaan semula kes plaintif adalah gerakan teknikal yang bertujuan untuk menggagalkan perbicaraan.

H **Diputuskan**, membenarkan lampiran 121 dan 124 dengan kos sebanyak RM2,500 bagi setiap permohonan yang perlu dibayar oleh plaintif kepada D1:

(1) Sudah jelas bahawa kebenaran untuk meminda boleh diberikan pada mana-mana peringkat prosiding, walaupun ia memperkenalkan kausa
I tindakan baharu, dengan syarat ia tidak mengakibatkan ketidakadilan atau prejudis kepada pihak lain yang tidak boleh dibayar pampasan dengan kos. Kuasa untuk membenarkan pindaan terletak pada budi bicara mahkamah, yang perlu dilaksanakan secara kehakiman dan mengikut prinsip undang-undang yang telah ditetapkan, dengan

mengambil kira keadaan unik setiap kes (lihat perenggan 9).

(2) Pindaan semula yang dimaksudkan oleh plaintif menonjolkan dakwaan percubaan D1 untuk mengemukakan tuntutan insurans palsu dengan syarikat insurans yang lain. Pada peringkat ini, mahkamah tidak dapat membuat kesimpulan sama ada D1 dan Puan Bavanni memberikan keterangan yang benar, tetapi mahkamah mendapati bahawa membenarkan keterangan yang dicadangkan akan memenuhi kepentingan keadilan. Ia juga akan membantu mahkamah dalam menentukan kredibiliti saksi-saksi. Dokumen yang dikenal pasti sebagai eksh HSY2 dan eksh HSY3 dalam lampiran 121, jika dikemukakan dengan betul melalui saksi dan tertakluk kepada pemeriksaan dan pemeriksaan balas, akan sangat membantu mahkamah dalam memutuskan perkara tersebut. Mengetahui bahawa dokumen-dokumen ini boleh membantu dalam mencapai keputusan yang adil dalam kes semasa, mahkamah mendapati tiada sebab untuk menafikan permohonan plaintif untuk meminda semula pernyataan tuntutan terpindanya (lihat perenggan 11–12).

(3) Dalam keadaan tersebut, mahkamah menolak hujah D1 bahawa permohonan untuk pindaan semula dan membuka semula kes plaintif adalah gerakan taktikal yang bertujuan untuk menggagalkan perbicaraan. Sebaliknya, membenarkan pindaan dan membuka semula kes plaintif untuk memperkenalkan dokumen-dokumen ini dapat memastikan pemeriksaan menyeluruh terhadap semua keterangan untuk pelupusan secara berkesan kes di hadapan mahkamah. Walaupun ketiadaan ekshibit ini mungkin menguntungkan defendan, namun, menjadikan ia tersedia dan mengemukakannya dengan betul sebagai keterangan di mahkamah tidak boleh dianggap memudaratkan sehingga mewajarkan pengecualiannya. Menafikan permohonan tersebut, oleh itu, sama dengan menyorokkan keterangan material, yang bertentangan dengan prinsip keadilan. Walaupun mahkamah mengiktiraf terdapat beberapa kelewatan dalam membuat permohonan, kelewatan tersebut boleh dibayar pampasan secukupnya dengan kos. Secara keseluruhannya, mahkamah yakin bahawa permohonan untuk pindaan semula tersebut dibuat dengan suci hati, dan apa-apa prejudis terhadap defendan boleh diberi pampasan yang secukupnya (lihat perenggan 13–14).

(4) Setelah mempertimbangkan dengan teliti permohonan plaintif untuk pindaan semula dan membenarkan perkara yang sama, demi kepentingan perbicaraan yang adil mahkamah mendapati bahawa permohonan plaintif untuk membuka semula kes mereka adalah bermerit. Inti pati kepada permohonan tersebut ialah kaitan Polisi AIA tersebut dan dokumen-dokumen berkaitan yang secara langsung bercanggah dengan keterangan D1 dan Puan Bavanni. Tambahan pula,

dakwaan plaintif bahawa ejen polisi AIA, Encik Vincent Heng @ Heng Meng Sheng, mungkin boleh memberikan keterangan penting yang memerlukan pembukaan semula kes tersebut. Mahkamah juga mengiktiraf penegasan plaintif bahawa kegagalan membuka semula kes akan mengakibatkan kegagalan keadilan. Setelah membenarkan pindaan semula kepada pernyataan tuntutan tersebut, yang terutamanya bertujuan untuk memperkenalkan keterangan baharu, keterangan tersebut tidak dapat diperiksa jika kes plaintif tidak dibuka semula. Kontrak insurans adalah berdasarkan prinsip niat baik sepenuhnya (*uberrimae fidei*), dan keperluan untuk meneliti semua keterangan yang berkaitan adalah penting untuk memastikan keadilan (lihat perenggan 17–18).]

Cases referred to

Dudas (guardian ad litem of) v Munro [1993] BCJ No 2035, SC (refd)
Everise Hectares Sdn Bhd v Citibank Berhad [2010] MLJU 1379; [2011] 2 CLJ 25; [2011] 2 AMR 705; [2010] 3 MLRA 306, CA (refd)
Hong Leong Finance Bhd v Low Thiam Hoe and another appeal [2016] 1 MLJ 301; [2015] 8 CLJ 1; [2016] 3 MLRA 81, FC (refd)
HSB Bank Malaysia Bhd v Macquarie Technologies (M) Sdn Bhd [2004] 4 MLJ 398; [2004] 3 CLJ 121; [2004] 4 AMR 580; [2004] 1 MLRA 460, CA (refd)
IFCI Ltd v Bishopgate Capital Ltd & Anor [2023] 12 MLJ 111; [2023] 6 CLJ 583; [2023] AMEJ 0646; [2023] MLRHU 542, HC (refd)
Public Bank Bhd v National Feedlot Corp Sdn Bhd & Ors and another appeal [2018] MLJU 938; [2018] 6 MLRA 495; [2018] AMEJ 0790; [2018] CLJU 966, CA (refd)
Tan Kah Khiam v Liew Chin Chuan & Anor [2007] 2 MLJ 445; [2006] 4 CLJ 715; [2006] 6 AMR 656; [2006] 2 MLRA 246, CA (refd)
Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd & Ors [1983] 1 MLJ 213; [1983] 1 CLJ 191; [1982] 1 MLRA 417, FC (refd)

Legislation referred to

Rules of Court 2012 O 20 r 5, O 92 r 4

KB Tan (K B Tan, Kumar & Partner) for the plaintiff.
R Vigneswaran a/l Raju (with Roshini Ramasamy) (The Chambers of Waran) for the defendants.

Moses Susayan JC:

[1] The plaintiff filed an application in encl 121 under O 20 r 5 and O 92 r 4 of the Rules of Court 2012, seeking leave to amend its amended statement of claim dated 21 January 2022 and simultaneously filed an application in encl 124 to reopen the plaintiff's case, in anticipation of the amendment. These

applications were made after the trial had progressed into the defendant's case, with the plaintiff having already closed its case. The defendants object to both applications for this reason and others.

[2] Since the amendment application in encl 121 directly impacts the application to reopen the plaintiff's case, this court decided to hear the application in encl 121 first. Upon granting the amendment, I have also, in the interest of a fair trial, allowed encl 124 for the plaintiff to reopen its case.

BACKGROUND FACTS

[3] The plaintiff, a licensed takaful operator, issued a takaful policy known as Takaful Senior Gold (Certificate No Z173718852) to Mr Parameswaran a/l Kanaan, now deceased. The first defendant (D1) was named as the nominee in the policy. The second defendant (D2), the deceased's lawful wife, is the representative of his estate. The plaintiff initiated this action, seeking a declaration to repudiate the policy and to be deemed null and void due to alleged fraudulent misrepresentation by D1 at the time of the policy's issuance.

[4] Initially, the plaintiff was represented by Messrs Francis Pereira & Shan. However, after the plaintiff had closed its case and the defendants started their case, the plaintiff's solicitors recused themselves due to a material conflict of interest arising from the evidence given by SD3, Rajama a/p Arachanan. As a result, a new firm of solicitors, Messrs KB Tan, Kumar & Partners, was appointed on 25 April 2024, the solicitors then filed encls 121 and 124.

THE PLAINTIFF'S CASE

[5] The plaintiff applied to re-amend the amended statement of claim due to new evidence arising from witnesses' evidence during trial statements and the discovery of contradictory information. D1 had testified that the deceased was his cousin, and Madam Bavanni (SD2) had also claimed the same, stating she was D1's wife. The plaintiff contends as follows:

(a) that in the course of the trial, the D1 testified that the deceased, Mr Parameswaran a/l Kanaan, was his cousin. This statement was intended to establish a familial relationship between D1 and the deceased, presumably to support D1's role as the nominee in the Takaful Senior Gold policy;

(b) that Madam Bavanni, a witness for the defence, testified that she was both the wife of D1 and a cousin of the deceased. This dual claim serves two purposes: firstly, to align herself with the deceased through familial ties, and secondly, to position herself in a close relationship with D1, thereby attempting to strengthen their collective credibility regarding

the Takaful policy and any claims of entitlement;

(c) that the testimony of D1 and Madam Bavanni introduces significant contradictions and raises questions about the veracity of their statements. On one hand, the claim that Bavanni is D1's wife conflicts with her being the nominee for the deceased under another insurance policy (the AIA policy), where her stated relationship to the deceased is listed as 'spouse'. On the other hand, D1's assertion that the deceased was his cousin is directly contradicted by his designation as the deceased's 'son' in the AIA policy. These inconsistencies highlight potential misrepresentations aimed at manipulating the outcomes of claims under various insurance policies; and

(d) that during cross-examination, D1 denied being named as a nominee in any other insurance policies issued to Parameswaran a/l Kanaan, the deceased. However, upon the advice of new solicitors, the plaintiff obtained a copy of an AIA policy, which was exhibited in encl 122 as 'exh HSY2' that revealed D1 had paid premiums using his CIMB card and was listed as the deceased's 'son', while Bavanni was named as the 'spouse' and as the policy's nominee. The contradicting evidence of the witnesses, namely D1 and Madam Bavanni, during the trial when compared with 'exh HSY2', has a serious bearing on their credibility as witnesses in this proceeding. I have taken the liberty to append below the relevant caption from the policy that contradicts the evidence of testimony given during the trial:

3. Credit Card Details (Please refer to terms and conditions on the last page)
Butir-Butir Kad kredit (Sila rujuk kepada Terma dan Syarat-syarat di muka surat terakhir)

Cardmember Account No *No.Akaun Pemegang Kad*	XXXX-XXXX-XXXX-1808
Card Expiry Date (MM/YYYY) *Tarikh Tamat Tempoh Kad (BB/TTTT)*	01/2023
Issued By *Dikeluarkan oleh*	CIMB BANK BERHAD
Cardmember's Name *Nama Pemegang Kad*	Yathavan AL Doraisamy
Telephone No. / *No. Tel*	+60-105605181
Cardmember's relationship to Person Covered *Perhubungan pemegang Kad dengan Orang Dilindungi*	Son

Name *Nama*	New IC No. / Identification No. *No. KP. Baharu / No. identiti*	Date of Birth *Tarikh Lahir*	Address *Alamat*	Relationship *Hubungan*	Percentage *Peratusan*
Bavanni AP Ramachandaram	940124-08-5846	01/24/1994	[redacted]	Spouse	100

[6] After the deceased's passing, Bavanni's claim under the AIA policy had been rejected for non-disclosure. In any event, for the purposes of this proceeding, the information provided for the AIA policy contradicted D1's and Bavanni's testimonies in court, thus justifying the plaintiff's amendment application to include these facts in the interest of justice. The plaintiff asserts that the amendment is bona fide, will not prejudice D1, and is essential given the nature of the contract being *uberrimae fidei,* which requires utmost good faith in disclosing all particulars for the policy issued.

THE DEFENDANT'S CASE

[7] The D1 objects to the plaintiff's application to re-amend the statement of claim on several grounds. First, the D1 asserts that the application is made in bad faith, alleging that it is a tactical manoeuvre designed to delay the trial, increase costs, and prolong the proceedings, particularly by postponing the cross-examination of key witnesses (D2 and David s/o Alexander Charles). D1 also argues that costs cannot adequately compensate any prejudice suffered by them as a result of the re-amendment. Furthermore, the D1 contends that the plaintiff's application was filed late after the plaintiff had closed its case while the defendant's case was ongoing. The plaintiff's application was without a certificate of urgency and without a cogent explanation for the delay. D1 points out that although the plaintiff changed solicitors on 4 March 2024, the applications were only filed nearly two months later. Further, D1 submits that the proposed amendment fundamentally changes the character of the suit, introducing irrelevant evidence that purportedly has no relevance to the current proceedings. The defendant also claims that the AIA policy documents referred to in the re-amendment application existed prior to the initiation of the suit and that the plaintiff has failed to disclose them.

[8] D1 referred to several cases to support their contention that re-amendments should not be allowed when they cause undue delay, introduce irrelevant issues, or are made in bad faith. Below are the cases referred to:

(a) *Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd & Ors* [1983] 1 MLJ 213; [1983] 1 CLJ 191; [1982] 1 MLRA 417 the Federal Court emphasised three general principles to ensure no injustice to allow amendment:

  (i) whether the application is *bona fide;*

  (ii) whether the prejudice caused to the other side can be compensated by costs; and

  (iii) whether the amendments would turn the suit into one of a different and inconsistent character.

(b) *Hong Leong Finance Bhd v Low Thiam Hoe and another appeal* [2016]

1 MLJ 301; [2015] 8 CLJ 1; [2016] 3 MLRA 81, the Federal Court held that for late amendments, there must be a cogent and reasonable explanation in the applicant's affidavit justifying the delay. It further ruled that contumelious delay in filing cannot necessarily be compensated by costs and amendments must disclose full particulars to show a real prospect of success.

(c) *Public Bank Bhd v National Feedlot Corp Sdn Bhd & Ors and another appeal* [2018] MLJU 938; [2018] 6 MLRA 495; [2018] AMEJ 0790; [2018] CLJU 966, the Court of Appeal emphasised that amendments should not be allowed if they alter the character of the suit or introduce vague and unsupported claims, especially when known facts were available at the outset but only later brought forward:

> [50] The fact that these amendments which were known or ought to have been available to the plaintiff from the outset, and were only sought to be pleaded some five years later, cannot be simply ignored or excused. This, coupled with the altered character of the claim, the lack of particulars, the remoteness of the claim, the vagueness of the special damages claim and the extraordinary size of the claim, all point towards this amendment being less than bona fide. Bona fides is an essential element of any claim for an amendment, according *Yamaha Motor* principles.

(d) *Everise Hectares Sdn Bhd v Citibank Berhad* [2010] MLJU 1379; [2011] 2 CLJ 25; [2011] 2 AMR 705; [2010] 3 MLRA 306, the court noted that late amendments, particularly those introduced mid-trial, could be a tactical manoeuvre intended to delay proceedings. It stated that amendments should not be allowed if they unfairly prejudice the opposing party. The Court of Appeal in *Everise* stated:

> [40] In *Lim Nyang Tak Michael v Ace Technologies Sdn Bhd* [1995] 4 MLJ 616; [1995] 4 MLRH 442, where Abdul Kadir Suleiman J (later FCJ) rightly held that:
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> > It was not a question of negligence to plead all those matters in the original defence but a tactical manoeuvre and done in bad faith to delay the rights of the plaintiff on his claim. The application to amend the defence after exposure by the plaintiff in his affidavit in support was a tactic to confuse the issues by creating imaginary 'triable issues' and to stall the plaintiff of his rights. If this was allowed, it would unnecessarily cause prejudice to the plaintiff which could not be compensated by costs.
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> [33] In *Taisho Co Sdn Bhd v Pan Global Equities Bhd & Anor* [1999] 1 MLJ 359 ... the application for leave to amend was filed four years after the action was was commenced and the appellant was aware of the facts four years before the action was filed. There was no explanation for the delay and this court concluded that the application for leave to amend lacked bona fide.

(e) in *HSB Bank Malaysia Bhd v Macquarie Technologies (M) Sdn Bhd*

[2004] 4 MLJ 398; [2004] 3 CLJ 121; [2004] 4 AMR 580; [2004] 1 MLRA 460, the court focused on the issue of materiality of the amendment stated:

> However, the materiality and effectiveness of the proposed amendment are relevant consideration. The court will not allow an amendment where the probable consequences of such an amendment would be useless or ineffectual. Good J in *Ponnusamy & Anor v Nathu Ram* [1959] 1 MLJ 228; [1959] CLJU 73; [1959] 1 LNS 73 said that in an application to amend the pleadings, the court should consider the materiality and the effectiveness of the amendment, and that it was a well established practice not to allow an amendment where it appeared that such an amendment would be useless. It was further held that the court should look at the probable consequences of the amendment and if the amendment would be ineffectual then it ought not to be allowed to be made (see also *Wong Ah Hee @ Wong Ah Mooi & Anor v Low Tuck Hoong* [1993] MLJU 183; [1994] 2 CLJ 313; [1993] 2 AMR 48). The High Court of *Australia in the State of Queensland & Anor v JL Holdings Pty Ltd* (141) ALR 353 referred to *Cropper v Smith* which held that:
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> > As the defence, if established, would be a complete answer in either action, the amendments sought should have been allowed unless it appeared that injustice would thereby have been occasioned to the respondent, there being nothing to suggest fraud or improper concealment of the defence on the part of the appellants

FINDING OF THE COURT

[9] It is well established that leave to amend may be granted at any stage of the proceedings, even if it introduces a new cause of action, provided it does not result in injustice or prejudice to the other party that cannot be compensated with costs. The power to allow amendments rests with the court's discretion, which must be exercised judiciously and in accordance with settled legal principles, taking into account the unique circumstances of each case.

[10] In this instance, the plaintiff's case against D1 centres on alleged insurance fraud. Proving fraud is inherently challenging, but the proposed amendment seeks to introduce evidence that could assist this court in determining the truth. While I am not prejudging the outcome of the case, it is crucial to allow both parties the opportunity to present all relevant evidence to ensure that justice is served.

[11] The plaintiff's intended re-amendment highlights D1's alleged attempt to submit a false insurance claim with another insurance company. During cross-examination, prior to the re-amendment application, D1 and Madam Bavanni in evidence denied purchasing an AIA insurance policy for the deceased, where Madam Bavanni was named as the beneficiary and D1 had paid the premiums using his CIMB card. In the AIA insurance policy for the

deceased D1 was described as the deceased's 'son' where else Madam Bavanni was describe as the deceased's spouse. If it is true that such a policy with AIA was indeed purchased by D1, the law demands that the truth must be told under oath because witnesses are obligated to speak the truth, regardless of whether documentary evidence is presented before them. At this stage, I cannot conclude whether the D1 and Madam Bavanni provided truthful testimony, but I find that allowing the proposed evidence would serve the interests of justice in this case. It would also aid the court in determining the credibility of the witnesses and in reaching a final decision in the case.

[12] The documents identified as exh HSY2 and exh HSY3 in encl 121, if properly tendered through witnesses and subjected to examination and cross-examination, will significantly aid the court in deciding the matter. Knowing that these documents could assist in achieving a fair outcome in this case, I find no reason to deny the plaintiff's re-amendment application.

[13] In the circumstances, I do not accept the D1's argument that the application for re-amendment and reopening the plaintiff's case is a technical manoeuvre intended to derail the trial. On the contrary, allowing the amendment and reopening the plaintiff's case to introduce these documents ensures a comprehensive examination of all evidence for the effective disposal of the case before this court. While the absence of these exhibits might be advantageous to the defendants, nevertheless, making them available and properly tendering them as evidence in this court — where they could potentially disadvantage the defendants — cannot be considered prejudicial in a manner warranting their exclusion

[14] Denying the application would, therefore, amount to suppressing material evidence, which is contrary to the principles of justice. Although I recognise some delay in making this application, such delay can be adequately compensated with costs, which I address here. On the whole, I am convinced that the application for re-amendment is made in good faith, and any prejudice to the defendants can be adequately compensated.

[15] I do not find D1's arguments regarding prejudice, as presented, to merit consideration by this court. Material evidence that can shed light on the determination of the case cannot be deemed prejudicial by either the plaintiff or the defendant solely because it may have a damaging effect on the case. To hold otherwise and act accordingly would amount to suppressing evidence, an approach that this court or any court cannot and will not condone.

[16] For the reasons stated above, I allow the plaintiff's application to re-amend the statement of claim as prayed for in encl 121, and accordingly, I order the plaintiff shall pay costs of RM2,500 to D1.

RE-OPENING THE PLAINTIFF'S CASE

[17] Having carefully considered the plaintiff's application for re-amendment and allowing the same, this court in the interest of a fair trial finds merit in the plaintiff's application to reopen their case. Central to the application to reopen the plaintiff's case is the relevance of the AIA policy and related documents (subject to admissibility and weight to be attributed to it), which directly contradict the testimonies of the D1 and Madam Bavanni. These documents highlight critical discrepancies in their statements regarding their relationship with the deceased, raising significant questions about their credibility. Furthermore, the plaintiff's contention that the AIA policy agent, Mr Vincent Heng @ Heng Meng Sheng, may provide crucial testimony that requires the need to reopen the case. While D1 has argued that no new witnesses have been identified, the court finds this contention to be premature, as the necessity of identifying witnesses only arises after the court permits the case to be reopened.

[18] This court also acknowledges the plaintiff's assertion that failing to reopen the case would result in a miscarriage of justice. Having allowed the re-amendment to the statement of claim was primarily to introduce new evidence, it would leave those evidence unexamined, without reopening the plaintiff's case. Insurance contracts are based on the principle of utmost good faith (*uberrimae fidei*), and the need to scrutinise all relevant evidence is paramount to ensure fairness. The plaintiff has demonstrated that any potential prejudice to D1 can be adequately compensated by costs.

[19] In *Tan Kah Khiam v Liew Chin Chuan & Anor* [2007] 2 MLJ 445; [2006] 4 CLJ 715; [2006] 6 AMR 656; [2006] 2 MLRA 246, the Court of Appeal held that reopening a case is an exercise of judicial discretion and that courts may allow a party to reopen their case to receive further evidence in the interest of justice, especially when the defendant has not closed its case. The objective of such discretion is to decide the rights of the parties in litigation and not to punish procedural mistakes unless exceptional circumstances justify doing so. His Lordship Justice Gopal Sri Ram sitting in Court of Appeal stated:

> With respect, I am unable to accept the reasoning of the learned judge in the foregoing passage. In my judgment, the criteria for permitting a party at a trial to reopen its case for the purpose of either recalling a witness or calling fresh evidence are very different from those that govern the statutory jurisdiction of an appellate court to receive further evidence. Indeed they cannot be the same as I shall try to demonstrate
>
> ... whether the trial judge may exercise his discretion to permit the reopening of a party's case will very much depend on the stage at which the application is made. It may be more likely that discretion may be exercised at the stage where the application is made immediately after a party closes his case. But it may be less likely

A that discretion will be favourably exercised where the application is made after the defendants have closed their case and just before the trial judge is about to pronounce his judgment. In the spectrum of factual possibilities that exist between each of these two extremes the exercise of discretion would, in my judgment, very much depend as to where the justice of the case lies having regard to the peculiar
B facts and circumstances before the court.

[20] In *Tan Kah Khiam*, Justice Gopal Sri Ram referred to a passage from the case of *Dudas (guardian ad litem of) v Munro* [1993] BCJ No 2035 (QL), wherein Braidwood J summarised the law concerning the court's discretion to
C reopen a case before judgment is entered, it says that such discretion is unfettered but must be exercised sparingly to prevent any miscarriage of justice. The governing principles is whether a miscarriage of justice would likely occur without a rehearing and whether a rehearing would likely lead to a different
D outcome. The passage highlights that reopening a trial should only be undertaken to address serious concerns of justice and fairness, ensuring the integrity of the judicial process. I shall reproduce the said passage here:

> The view I have to make is supported by the decision in *TD Canada Trust v McMaster* [2003] BCJ No 2525, where Garson J said:
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> E
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> > In *Dudas (guardian ad litem of) v Munro* [1993] BCJ No 2035 (QL), Braidwood J (as he then was) summarised the law concerning the court's discretion to re-open a trial before judgment is entered as follows: In deciding whether or not to re-open a case, the governing considerations are first, would a miscarriage of justice probably occur without a re-hearing; and second, would a re-hearing
> F probably produce a change of result?. The discretion to re-open a trial before judgment is entered is an unfettered discretion but one that should be used sparingly (*Sykes v Sykes* [1995] BCJ No 821 (CA)) and has as its purpose the correction of what would otherwise be a miscarriage of justice (*Kemp v Wittenberg* [1999] BCJ No 810 (SC))

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[21] In *IFCI Ltd v Bishopgate Capital Ltd & Anor* [2023] 12 MLJ 111; [2023] 6 CLJ 583; [2023] AMEJ 0646; [2023] MLRHU 542, it was decided that the delay in seeking amendments does not inherently indicate bad faith. It states that courts are required to balance the potential hardship to the
H respondent with the injustice of denying the applicant a fair chance to present their case fully. Allowing amendments mid-trial implicitly involves revisiting previously addressed issues and evidence, effectively reopening the case.

CONCLUSION

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[22] In conclusion, based on the plaintiff's aforementioned reasons and in the interest of justice and fairness, and despite any procedural delays or technical objections, I have no doubt in exercising my discretion to allow the plaintiff's applications to amend the pleadings (encl 121) and reopen its case

(encl 124). This decision emphasises the importance of addressing all material issues to ensure justice and a fair determination of the parties' rights. However, to compensate for the prejudice caused to D1, I award costs of RM2,500 for each application, in favour of D1, to be paid by the plaintiff.

Enclosures 121 and 124 allowed with costs of RM2,500 for each application in favour of D1 to be paid by plaintiff.

Reported by Dzulqarnain Ab Fatar